IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:21-CV-86-FL

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| UNITED STATES OF AMERICA, | ) | |
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| Plaintiff, | ) | |
| | ) | |
| v. | ) | MEMORANDUM OPINION |
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| MARK A. SAUNDERS, | ) | |
| | ) | |
| Defendant. | ) | |

This matter, initiated by complaint filed May 7, 2021, wherein plaintiff contends defendant owes a significant tax liability, came before the court for pretrial conference at New Bern November 17, 2022, pursuant to Rule 16(a) of the Federal Rules of Civil Procedure. Plaintiff appeared through counsel, Elizabeth M. Bruce, and defendant appeared through counsel, Erik P. Doerring and Elaine R. Jordan. The court memorializes herein certain decisions made on timing of case events.

BACKGROUND

In accordance with the court's September 13, 2022, order, and pursuant to Federal Rule of Civil Procedure 26(f), the parties tendered October 18, 2022, their joint report and plan for case scheduling. [DE 43]. Therein the parties made mention of the completion of the exchange of initial disclosures. A discovery proposal was included. Defendant focused on potential benefit of early mediation. The court took note of the mention of certain affirmative defenses and other issues not illuminated in the pleadings raised up on the face of the parties' report and plan. Request jointly was made for conference with the court before entry of its scheduling order.

Upon its review of their proposals, and reflection on the docket, the court determined in person conference would be of benefit and scheduled same. That conference was undertaken at New Bern, with the noted attendees.

DISCUSSION

This conference November 17, 2022, provided opportunity for the court to receive clarification of the parties' respective positions and consider need for amendment(s) to the pleadings. The court also learned more about plaintiff's record keeping, and delay in provision of case information maintained by the Internal Revenue Service ("IRS"). Defendant advocated the importance of underlying IRS documentation over a period of years to its defenses.

Upon hearing from the parties, it emerged that the IRS has not yet provided all requested documentation underlying the action due to a reported document backlog. Around June 2022, plaintiff's counsel indicated request had been made to the IRS to provide all tax documentation of or relating to defendant, to which no response has yet been received.
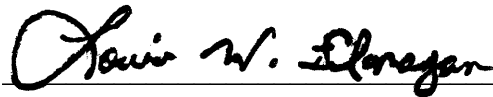
On this basis, the court determined that any order establishing dates certain for the purposes of case management, including, for example, deadline for filing any motion to amend, deadline for the conduct of discovery including any depositions, and deadline for filing any dispositive motions would be so arbitrary and subject to flux as to be rendered essentially meaningless.

Consistent with the ensuing discussions, and with the consent of the parties, the court ordered the following:

1. Plaintiff shall obtain and disclose all IRS records relating to Mark A. Saunders, defendant in this case, on or before **December 31, 2022**.

2. The parties shall submit successive joint report and plan on or before **February 15, 2023**.

a. Said report and plan provides opportunity for the parties to influence pretrial deadlines remaining to be set, with benefit of their review of IRS records concerning the defendant to which plaintiff has access, to be disclosed to defendant by the end of this calendar year.

b. With deference to Rule 1, Fed.R.Civ.Pro., the parties are encouraged to use the successive report and plan as a vehicle also for suggesting specific topic(s) for consideration at pending conference the court will convene before its entry finally of the controlling case management order.

3. It is the court's intention to undertake that conference by telephone after filing of the report and plan on or before **March 1, 2023**. The parties are invited in this regard to promote therein alternative dates and times of their shared availability.

SO ORDERED, this the 28th day of November, 2022.

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LOUISE W. FLANAGAN
United States District Judge

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